



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 6179-99

28 January 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) DD Form 149
(2) Case Summary
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps, applied to this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the undesirable discharge issued on 14 November 1974.

2. The Board, consisting of Messrs. Morgan, Zs Salman, and Rothlein reviewed Petitioner's allegations of error and injustice on 20 January 2000, and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 9 November 1970 for four years at age 17. The record reflects that he was advanced to PFC (E-2) and served for more than 10 months without

incident. However, during the 21 month period from September 1971 to June 1973 he was convicted by a summary court-martial and received three nonjudicial punishments (NJP). His offenses consisted of a 42 day period of unauthorized absence (UA), failure to obey a lawful regulation and two instances of failure to report to his appointed place of duty.

d. On 9 January 1974, Petitioner was convicted by special court-martial of a 114 day period of UA. He was sentenced to confinement at hard labor for three months, forfeitures of \$150 per months for three months, and a reduction in rank to PVT (E-1).

e. On 17 June 1974, Petitioner was notified that he was being recommended for discharge under other than honorable conditions by reason of unfitness due to frequent involvement of a discreditable nature with military authorities. He was advised of his procedural rights and elected to present his case to an administrative discharge board (ADB). Petitioner received his fourth NJP on 19 September 1974 for violation of a general order while posted as a sentry.

f. Petitioner appeared before an ADB with counsel on 26 September 1974. The ADB heard testimony from a SGT (E-5) and two CPL's (E-4) to the effect that Petitioner's performance was always good, he carried out his orders, created no problems, and had a good appearance. His then current commanding officer (CO) also testified that he did a good job and worked out ways to improve supply procedures. The CO noted that Petitioner's problems seem to occur in dealing with higher ranking personnel, and seemed to create stress problems for Petitioner. The CO stated that Petitioner could adapt to military life for an enlistment, but not for a career.

g. The ADB found Petitioner unfit and recommended that he be separated with an undesirable discharge by reason of unfitness, but further recommended that the discharge be suspended for a period of six months. The ADB proceedings were reviewed by a staff judge advocate (SJA) and were found to be sufficient in law and fact. The SJA noted that in accordance with the applicable regulation, if discharge is recommended, a further recommendation for suspension of the separation was not appropriate. On 8 November 1974, the discharge authority directed an undesirable discharge by reason of unfitness. Petitioner was so discharged on 14 November 1974.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes that the ADB's recommendation for suspension of Petitioner's discharge apparently was due to the fact that he was reasonably close to the expiration of his enlistment. Had the ADB recommended retention, the discharge authority would have been precluded from directing discharge. Petitioner would then most probably have been permitted to serve until the expiration of his enlistment, and separated with a general discharge. However, since the ADB only recommended suspension of the discharge, the discharge authority was not bound to suspend it but could direct an immediate separation. The Board believes that had the ADB known that its recommendation would not be upheld, it would have recommended retention. Accordingly, the Board believes that it would appropriate and just to recharacterize Petitioner's discharge to a general discharge under honorable conditions.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge by reason of unfitness on 14 November 1974 vice the undesirable discharge actually issued on that date. This should include the issuance of a new DD Form 214.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.


c. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 30 September 1999.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director